

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79115255
LAW OFFICE ASSIGNED	LAW OFFICE 112
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_502007186-105237975_.SEASTAR_FINAL_ROA.pdf
CONVERTED PDF FILE(S) (8 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\152\79115255\xml16\RFR0002.JPG
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DESCRIPTION OF EVIDENCE FILE	Applicant's Arguments in Response to Office Action.
GOODS AND/OR SERVICES SECTION (009)(current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Satellite receiving apparatus for receiving and processing positions and navigation data via satellite	

GOODS AND/OR SERVICES SECTION (009)(proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
Satellite receiving apparatus for receiving and processing positions and navigation data via satellite; <u>Nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite</u>	
FINAL DESCRIPTION	
Nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite	
GOODS AND/OR SERVICES SECTION (038)(no change)	
GOODS AND/OR SERVICES SECTION (039)(no change)	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/jmh/
SIGNATORY'S NAME	Jennifer M. Hetu
SIGNATORY'S POSITION	Attorney of Record, Michigan Bar Member
SIGNATORY'S PHONE NUMBER	248-566-8452
DATE SIGNED	11/04/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Nov 04 10:57:40 EST 2013
TEAS STAMP	USPTO/RFR-50.200.7.186-20 131104105740549152-791152 55-5006f9d496aef4c6b074c4 7dfffd249cbfb9f1ffe4c4656c 8fa21812bbf86b3c-N/A-N/A- 20131104105237975754

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **79115255** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of Applicant's Arguments in Response to Office Action, has been attached.

Original PDF file:

[evi_502007186-105237975_._SEASTAR_FINAL_ROA.pdf](#)

Converted PDF file(s) (8 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Satellite receiving apparatus for receiving and processing positions and navigation data via satellite

Original Filing Basis:

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Satellite receiving apparatus for receiving and processing positions and navigation data via satellite~~; [Nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite](#)

Class 009 for Nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite

Filing Basis Section 66(a), Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /jmh/ Date: 11/04/2013

Signatory's Name: Jennifer M. Hetu

Signatory's Position: Attorney of Record, Michigan Bar Member

Signatory's Phone Number: 248-566-8452

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79115255

Internet Transmission Date: Mon Nov 04 10:57:40 EST 2013

TEAS Stamp: USPTO/RFR-50.200.7.186-20131104105740549

152-79115255-5006f9d496aef4c6b074c47dffd

249cbfb9f1ffe4c4656c8fa21812bbf86b3c-N/A

-N/A-20131104105237975754

This is in response to the final Office Action issued May 5, 2013, related to U.S. Application No. 79115255 for the mark SEASTAR (“Applicant’s Mark”). In the final Office Action, the Examining Attorney acknowledged acceptance of Applicant’s claim of prior U.S. Registration No. 2437930.

However, the Examining Attorney maintained a partial refusal to register Applicant’s Mark on the basis of a likelihood of confusion with U.S. Reg. No. 4072586 for the mark SEA⁺STAR & Design (the “Cited Mark”) for “cabinets for loudspeakers; record players; television apparatus, namely, television sets; DVD players; MP3 players; network players, namely, computer network adapters; video recorders; camcorders; cameras; electronic players and recording apparatus for household use, namely, combination video players and recorders, webcams, video projectors, digital picture display screens and frames and electronic book readers; digital cameras; monitors, namely, computer monitors; electronic pocket translators; laptop computers; satellite navigational apparatus, namely, global positioning systems; portable telephones; network communication equipment, namely, computer hardware for communication audio, video and data between computers via a global computer network, wide-area computer networks, and peer-to-peer computer networks; electronic notice boards; printed circuits; set-top boxes; wireless headsets for telephones and wireless cellular phone headsets” in Class 9, owned by Shenzhen Sea Star Technology Co., Ltd. (the “Cited Mark”).

Applicant respectfully disagrees with the likelihood of confusion refusal related to the Cited Mark, and requests that the refusal be withdrawn. In particular, Applicant has amended its identification of goods as part of its response in order to underscore the differences in the goods between the parties. Applicant has filed a Notice of Appeal in connection with this Request for Reconsideration.

An additional review of the applicable *DuPont* factors establishes why there is no likelihood of confusion, mistake, or deception between Applicant’s Mark and the Cited Mark.

Dupont Factors – Comparison of the Goods

Applicant notes that the Examining Attorney has limited the Section 2(d) Refusal to Applicant’s goods in Class 9 only.

As mentioned above, Applicant has amended its Class 9 identification of goods to “*nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite*” as part of its response. Applicant’s goods in Class 9 now specifically reflect that such goods are nautical equipment.

The Examining Attorney continues to fail to acknowledge the gross differences in the goods covered by each mark, as well as the differences in trade channels and consumers. Although the Examining Attorney claims that refusals are based solely on the identification of goods as they are written, consideration must be given to *all the circumstances* surrounding the sale of the goods/services, including marketing channels, the class of prospective purchasers and the degree of similarity between the respective goods/services. See *Industrial Nucleonic Corp. v. Hinde Engineering Co.*, 177 U.S.P.Q. 386 (C.C.P.A. 1973).

In the final Office Action, Examining Attorney has included additional evidence that provides evidence about the global positioning system (GPS) navigation system. In addition to the Radio Shack tutorial webpage, the Examining Attorney has included a definition of GPS and additional information about how a GPS receiver is used. However, this additional information still does not support a finding that the “global positioning systems” covered by the Cited Mark are related to Applicant’s nautical satellite receiving apparatus.

The registration for the Cited Mark is owned by Shenzhen Sea Star Technology Co., Ltd. (“Shenzhen”). Shenzhen is a manufacturer of consumer electronics. *See* Ex. A, April 9, 2013 Petition to Revive Application/Response to Office Action. On its website, Shenzhen describes itself as a “Quality [] Audio expert[]” that developed a “China Audio brand,” and that it is “interested in the future [and] will bring *consumers* more quality, excellent audio and video products” (emphasis added). *See* Ex. B, April 9, 2013 Petition to Revive Application/Response to Office Action. Screenshots from Shenzhen’s website make it clear that it manufactures consumer electronic products that are marketed towards individuals. *See* Ex. C, April 9, 2013 Petition to Revive Application/Response to Office Action.

In contrast, Applicant is a “service provider for the collection and interpretation of data relating to the earth’s surface and sub-surface and for associated services and advice in support of infrastructure development on land, along the coast and on the seabed.” *See* Ex. D, April 9, 2013 Petition to Revive Application/Response to Office Action. Applicant’s goods and services are specifically marketed towards and used by large companies in the oil and gas industry, construction industry, mining sector, and government. *Id.* Therefore, it is clear that Applicant and Shenzhen are engaged in fundamentally different business activities.

Additionally, the identification of goods for each mark underscores the differences in the goods. The Cited Mark covers the following consumer electronics in Class 9: “Cabinets for loudspeakers; record players; television apparatus, namely, television sets; DVD players; MP3 players; network players, namely, computer network adapters; video recorders; camcorders; cameras; electronic players and recording apparatus for household use, namely, combination video players and recorders, webcams, video projectors, digital picture display screens and frames and electronic book readers; digital cameras; monitors, namely, computer monitors; electronic pocket translators; laptop computers; satellite navigational apparatus, namely, global positioning systems; portable telephones; network communication equipment, namely, computer hardware for communication audio, video and data between computers via a global computer network, wide-area computer networks, and peer-to-peer computer networks; electronic notice boards; printed circuits; set-top boxes; wireless headsets for telephones and wireless cellular phone headsets.”

Conversely, Applicant’s Class 9 goods are specifically limited to “*nautical apparatus, namely, satellite receiving apparatus for receiving and processing positions and navigation data via satellite.*” Applicant’s SEASTAR mark is used with a highly specialized receiver that provides users with access to a Differential Global Satellite Navigation System (DGNSS) positioning that is specifically marketed towards the marine market. Users include offshore support vessels,

drilling ships and rigs, floating production units, shuttle tankers, service vessels, and offshore loading. *See* Ex. E, April 9, 2013 Petition to Revive Application/Response to Office Action.

While it is true that Applicant's SEASTAR receiver may incorporate GPS reception capability, it is a stretch to claim that Applicant's goods are "identical" or even related to the consumer GPS device covered by the Cited Mark. By attempting to do so, the Examining Attorney appears to claim that all GPS products or devices are related, even those with highly dissimilar uses.

Therefore, it is clear from the identification that Applicant's Mark is used strictly in connection with a nautical satellite receiving apparatus, and the Cited Mark is used with consumer electronics. Despite the fact that the Cited mark covers "global positioning systems" a consumer GPS device is extremely different from Applicant's highly specialized goods.

Also, Applicant's goods and Shenzhen's goods are offered in vastly different channels of trade. Applicant uses specific and targeted marketing channels to find and attract its customers, and its customer base consists of companies in the oil and gas industry, construction industry, mining sector, and government. Further, Applicant's goods under the Cited Mark are marketed towards a specific group within these industries – i.e., the marine market. Conversely, Shenzhen's goods offered under the Cited Mark are consumer electronics that are marketed towards individuals.

Applicant's goods and the goods covered by the Cited Mark are very different and confusion between the goods is extremely unlikely. Even if the Examining Attorney believes that Applicant's goods and Shenzhen's goods fall into the same broad category of "global positioning systems," each of the goods fall in a distinct sector of the broad category sufficiently unrelated that consumers are not likely to assume the goods originate from the same source. *See Checkpoint Systems Inc. v. Check Point Software Technologies Inc.*, 60 USPQ2d 1609 (3d Cir. 2001); *W.W.W. Pharmaceutical Co. Inc. v. The Gillette Co.*, 25 USPQ2d 1593 (2d Cir. 1993). As previously indicated, there are significant differences in the parties' marketing channels, and the channels of trade in which consumers are likely to encounter the goods are very different. Confusion as to source or association is highly unlikely as a result of the manner in which consumers purchase the goods.

The differences in the specific nature of the parties' respective goods are an important factor in the likelihood of confusion analysis, and must be given due consideration. An analysis of the actual relationship of the goods based on their individual characteristics is always required, and **it is not proper to lump different goods into a broad category** (such as the "chemicals" and "ingredients") and then hold the different goods to be "related" automatically as a result. *See Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151 (C.C.P.A. 1978).

Consumer confusion is not likely to result in the marketplace given the differences in the presentation of the respective goods, and consumers' ability to distinguish the marks and goods because they "have become educated to distinguish between different marks on the basis of minute distinctions." *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383 (TTAB 1976). In comparing the products in the marketplace, confusion is highly unlikely due to context in which consumer will encounter and perceive Applicant's Mark and the Cited Mark. It is highly unlikely the consumer would encounter Applicant's goods and the goods covered by the Cited Mark on the same webpage or side-by-side. More specifically, a side-by-side comparison of

conflicting marks is improper if that is not the way buyers see the goods presented in the market. *G.D. Searle & Co. Chas. Pfizer & Co.*, 265 F.2d 385, 121 U.S.P.Q. 74 (7th Cir. 1959), cert. denied, 361 U.S. 819, 4 L. Ed. 2d 65, 80 S. Ct. 64, 123 U.S.P.Q. 590 (1959); *Plough, Inc. v. Kreis Laboratories*, 314 F.2d 635, 136 U.S.P.Q. 560 (9th Cir.) 1963); *Joahnn Maria Farinia Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc.*, 470 F.2d 1385, 176 U.S.P.Q. 1999 (C.C.P.A. 1972) (court must focus on the “general recollection” produced by the marks, not a side-by-side comparison.)

In summary, Applicant and Shenzhen are engaged in fundamentally different business activities targeted towards extremely different customer bases, and the goods provided by each entity are offered in vastly different channels of trade. As such, confusion as to source or association of the goods offered under each mark is highly unlikely.

DuPont Factors – Sophistication of the Consumer

Further, the Examining Attorney did not take into consideration the sophistication of the purchasing consumers for these goods.

Consumers looking for Applicant’s “nautical satellite receiving apparatus” are highly sophisticated consumers. These are not just average individuals looking for consumer electronic products. As previously mentioned, Applicant’s goods and services are specifically marketed towards and used by large companies in the oil and gas industry, construction industry, mining sector, and government. Applicant’s clients and consumers of such goods are not simply going to go to a directory to find “nautical satellite receiving apparatus” and related services. These consumers carefully choose where they will go to assist them with their specific needs. Such consumers are high level professionals capable of distinguishing between the goods offered by Applicant and Shenzhen.

When the consumer is a careful, distinguishing, sophisticated purchaser, he or she is less likely to be confused and small differences in the marks will make the marks distinguishable. See generally *General Controls Co. v. HI-G, Inc.*, 212 F. Supp. 152, 136 U.S.P.Q. 570 (D. Conn. 1962.)

Because the purchasers of the goods offered under Applicant’s Mark are careful, distinguishing, and sophisticated, there is little chance of likelihood of confusion between the marks.

DuPont Factors – Comparison of the Marks

The Examining Attorney has violated a basic trademark examination principle in articulating likelihood of confusion, namely, the Examining Attorney improperly dissected the Cited Mark. “[M]arks must be compared in their entirety. ... It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark (footnote omitted).” TMEP § 1207.01(b), quoting *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

Dissection of a mark is improper because it is an accepted tenet of trademark law that marks must be viewed in their entirety when conducting a likelihood of confusion analysis. The Supreme Court has held, and it is an accepted tenet of trademark law, that marks must be viewed

in their entirety when conducting a likelihood of confusion analysis. “[T]he commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail.” *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538 (1920).

The Examining Attorney separately extracted the wording “SEA STAR” from the Cited Mark and examined this wording in a vacuum for purposes of a likelihood of confusion refusal. The Examining Attorney concluded that because Applicant’s Mark and the Cited Mark share this wording, a likelihood of confusion exists. In doing so, the Examining Attorney eliminated the highly distinctive design element, as well as the plus symbol in the Cited Mark (shown below). In addition, the Examining Attorney failed to acknowledge the unique stylization utilized by the Cited Mark.



This constitutes improper dissection. Because of the improper dissection, the Examining Attorney gave no weight whatsoever to the distinct commercial impression imparted by each mark, as well as the differences in appearance between Applicant’s Mark and the Cited Mark.

The Cited Mark cannot be broken apart for purposes of examination, and doing so fundamentally changes the nature of the Cited Mark. Accordingly, it appears that the Examining Attorney chose to separately examine the shared wording for the purpose of justifying a likelihood of confusion refusal. When viewed as a whole, there are more differences between Applicant’s Mark and the Cited Mark than there are similarities.

Further, the mere identification of common elements in two marks does not mean that a likelihood of confusion exists. *Source Services Corp. v. Chicagoland JobSource, Inc.*, 1 U.S.P.Q.2d 1048 (N.D. Ill. 1986). “When considering the similarities of the marks ‘[a]ll relevant factors pertaining to the appearance and connotation must be considered.’” TMEP § 1207.01(b). *See Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 U.S.P.Q.2d 1894, 1897 (Fed. Cir. 2000). The mere similarity or even identity between the two marks can never alone be decisive of likelihood of confusion. *McGregor-Donniger, Inc. v. Drizzle, Inc.*, 202 U.S.P.Q. 81, 89 (2nd Cir. 1979).

In comparing the relevant factors in the present case, it is evident that when Applicant’s Mark and the Cited Mark are viewed in their entirety, they are very dissimilar in appearance, sensory impression, connotation, and commercial impression and not likely to result in confusion.

The Examining Attorney’s determination that Applicant’s Mark is similar to the Cited Mark is based entirely on the fact that the marks share the wording “SEA STAR.” However, such minor similarities are greatly outweighed by the dissimilar and distinguishable elements contained in the Cited Mark. Applicant’s Mark displays the wording “SEA STAR” as a single term, and the

Cited Mark displays the wording as two separate terms with a plus symbol between the terms. Further, the Cited mark utilizes a unique stylization and features a distinct design element. These differences result in the Cited Mark having a very distinct appearance that is dissimilar from Applicant's Mark. As such, the Cited Mark "evoke[s] a very different image in the minds of relevant consumers" than Applicant's Mark. *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 4714 U.S.P.Q.59 (Fed. Cir. 1998).

It is these individual aspects that collectively create the differences in the overall impression made by each mark. When taken as a whole, each mark conveys a different and distinct commercial impression. The visual distinctions between Applicant's Mark and the Cited Mark create unquestionably different commercial impressions, thereby precluding a finding of likelihood of confusion and favoring the registration of Applicant's Mark. *See Odom's Tennessee Pride Sausage Inc. v. FF Acquisition LLC*, 93 USPQ2d 2030 (Fed. Cir. 2010).

Further, it is important to note that when determining the strength of a particular mark, one looks at how widely used are the components of the mark. "Determining that a mark is weak means that consumer confusion has been found unlikely because the mark's components are so widely used that *the public can easily distinguish slight differences in the marks*, even if the goods are related." *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 3 U.S.P.Q.2d 1442 (8th Cir. 1987). In fact, in some cases confusion can be prevented by merely using a junior users mark in a different type style and format. If a word mark is relatively weak, a significantly different display of the same word can avoid a likelihood of confusion. *First Sav. Bank, F.S.B. v. First Bank System, Inc.*, 101 F.3d 645, 40 U.S.P.Q.2d 1865 (10th Cir. 1996).

Additionally, it is extremely important to note that the Cited Mark coexists with Reg. No. 2437930 for the mark FUGRO-SEASTAR owned by Applicant for "nautical apparatus, namely, receivers for receiving and processing data from global positioning satellites and shore-based navigation stations, transmitters for sending and relaying navigational information from global positioning satellites and shore-based navigation stations" in Class 9. This is a strong indication that the Cited Mark is not entitled to broad scope of protection in Class 9.

In summary, in refusing registration, the Examining Attorney improperly dissected the Cited Mark and failed to give proper consideration to the Cited Mark in its entirety. When taken as a whole, there are distinct differences in appearance, connotation, and commercial impression between the Applicant's Mark and the Cited Mark. As a result, Applicant's Mark and the Cited Mark convey different and separable commercial impressions. Further, the Cited Mark currently coexists with Applicant's FUGRO-SEASTAR mark in Class 9. Therefore, Applicant's Mark is readily distinguishable and not similar to the Cited Mark.

DuPont Factors – Actual Confusion

The final point and probably the most important and probative is that both Applicant's Mark and the Cited Mark currently exist in the marketplace and there have been no reports of actual confusion between the marks. Clearly, if there was a likelihood of confusion, there would be some type of actual confusion occurring between the marks.

While a showing of actual confusion is not required to establish infringement, an absence of actual confusion, or a negligible amount of it, between two products after a long period of co-existence on the market is highly probative in showing that little likelihood of confusion exists.

Aktiebolaget Electrolux v. Armatron Intern. Inc. 999 F.2d 1, 3, 27 U.S.P.Q. 2d 1460 (1st Cir. 1993.)

Applicant has been using the mark FUGRO SEASTAR since 1994 and in the United States since at least as early as 2001. In addition to using the mark FUGRO SEASTAR, Applicant has used the mark SEASTAR in the United States since at least as early as 2004.

Therefore, the Cited Mark and Applicant's Mark have co-existed in the marketplace since at least 2010, which is the filing date of the Cited Mark. (However, based on extrinsic evidence, the marks have likely coexisted for much longer). For over three years the marks have traded without any cause or conflict between the two marks. If actual confusion did exist in the past three years, there would have been some kind of conflict between the parties. However, the marks have peacefully co-existed in the marketplace for over three years.

In CareFirst of Maryland, Inc. v. First Care, P.C. 434 F.3d 263, 77 U.S.P.Q.2d 1577 (4th Cir. 2006) the court found no likelihood of confusion between the marks CAREFIRST and FIRSTCARE for the same services. In finding no confusion the court stated, "Nine years of co-existence with no evidence of actual confusion creates a strong inference that there is no likelihood of confusion."

This is on point with the case at hand, with no evidence of actual confusion between the Cited Mark and Applicant's Mark for over three years, confusion is unlikely.

Conclusion

Under the Lanham Act, a refusal to register under likelihood of confusion requires that such confusion as to the source of the goods/services must not be merely possible, but likely. A mere possibility of confusion is an insufficient basis for refusal under Section 2(d). See *In re Massey-Ferguson, Inc.*, 222 U.S.P.Q. 367, 368 (TTAB 1983). In the case at hand, there is no evidence to support a finding that confusion is likely. Further, the TTAB specifically stated in *In re Massey-Ferguson*: "We are not concerned with mere theoretical possibilities of confusion, deception or mistake or with de minimis situations but with practicalities of the commercial world, with which trademark deals." *Id.* at 368, quoting *Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 164 U.S.P.Q. 43, 44 (C.C.P.A. 1969).

Most important to the present case is the differences in the underlying goods. Applicant's goods are distinguishable from the goods covered by the Cited Mark, especially considering that the goods covered by Applicant's Mark are narrowly tailored and due to the fact that Applicant and Shenzhen are engaged in fundamentally different business activities offered in vastly different channels of trade. Such differences illustrate that there is less than a mere possibility of confusion in this case. In total, the DuPont factors weigh against a finding of likelihood of

confusion between Applicant's Mark and the Cited Mark. It would be plainly improper to maintain the refusal.

Therefore, the citation related to the Cited Mark should be withdrawn, and Applicant's Mark should be allowed to proceed to publication.

Please direct any questions regarding this response to the undersigned attorney for Applicant.